85-1133

Supreme Court, U.S.
FILED
DEC 24 1985
JOSEPH F. SPANIOL, JR.
CLERK

No.....

In the Supreme Court
of the
United States

October Term, 1985

MAUREEN ABBOT, ET AL.,
Petitioners,
vs.
HAGNER MANAGEMENT CORPORATION
Respondents.

PETITION FOR CERTIORARI

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85 M

QUESTIONS PRESENTED

A. Whether a residential tenant is entitled to a jury trial of twelve on material issues of fact in dispute prior to the deprivation of possession of real property?

B. Whether the Court failed to make a finding on the material issue of fact as to whether the landlord breached the April 11, 1983 Settlement Agreement by failing to comply with the May 22, 1984 State Rent Regulatory Agency Order to rollback rents and pay tenants rent refunds?

C. Were tenants denied due process by State Court action depriving them of the opportunity to present Constitutional issues?

THE PARTIES

The parties to this action are Petitioners, residential tenants at the Dorchester House Apartments, 2480 16th Street, N.W.,Washington, D.C. ("Tenants") and Respondents, Hagner Management Corporation,("Hagner").

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No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

MAUREEN ABBOTT et al
Petitioners

vs.

HAGNER MANAGEMENT CORPORATION
Respondent

PETITION FOR CERTIORARI

I.

OFFICIAL AND UNOFFICIAL REPORTS

There are no reported opinions arising out of this litigation. The District of Columbia Court of Appeals however did issue a Judgment on August 8, 1985 and on September 26, 1985 issued an

Order denying rehearing. Copies of those opinions are attached to the Appendix and Exhibits "1" and "2", and incorporated herein by this reference.

II.

BASIS FOR SUPREME COURT JURISDICTION

This petition arises from a decision of the District of Columbia Court of Appeals entered on August 8, 1985 and and order entered September 26, 1985 denying rehearing.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 2101(c) and Rule 20.2 of the Rules of the Supreme Court.

III.

CONSTITUTIONAL PROVISION
STATUTES AND RULES

The resolution of the questions presented in this Petition involves the Seventh Amendment to the United

States Constitution regarding the right of citizens to a trial by jury and the D.C. Rental Housing Act of 1980 concerning tenant rights to controlled rent levels.

IV.
STATEMENT OF THE CASE

A. Procedural History

On September 11, 1979, Dorchester Apartment tenants filed Tenant Petition T/P 3788 Benoit Brookens et al v. Hagner Management Corporation et al alleging rent ceiling and other violations of the District of Columbia Rent Control laws. After various remands for recomputations of damages, the D.C. Rental Accommodations and Conversion Division on May 22, 1984 awarded the class of tenants residing

at the Dorchester between June 1, 1977 and June 18, 1981 $1,139,872 in rent refunds for rent ceiling violations and Ordered the rents reduced to prescribed levels within thirty days of the Order.

Failure of the landlord to pay refunds and file a refunds plan with the D.C. rent authority eltitled tenants to withhold rents to recoup refunds by statutory "self-help." Prior Orders of the agency rendered July 17, 1980, February 10, 1981 and August 17, 1981 provided similiar million dollar awards with identical self-help language upon the landlords failure to pay refunds and reduce rents.

Pursuant to prior agency orders, Dorchester tenants withheld rents to recoup refunds, pursuant to which the landlord filed possessory actions for eviction for failure to pay rent.

The tenants, in 86 consolidated cases defended the possessory action on the basis of the Rent Agency authority to withhold rent and violations of the D.C. building code and demanded jury trials of twelve on the merits.

On April 11, 1983, in consolidated cases before three different D.C. trial Court judges, the landlord and the tenants entered into a settlement agreement whereby a one year moratorium on the tenant rent strike would be held until April 30, 1984, pending a decision in T/P 3788 which would determine applicable rent level and refunds due to tenants prescribed by the administrative rent control agency.

On May 22, 1984 the D.C. Rent Administrator in T/P 3788 rendered its revised refund and rent reduction Order.

The landlord was directed within 30 days to reduce rent and pay refunds, and file an refund plan with the Rent Administrator, all of which it failed to comply with.

On July 1, 1984, tenants pursuant to the decision in T/P 3788 began withholding rents. The landlord initially filed new Landlord and Tenant Court possessory actions against eight (8) tenants in 1984. As the number of tenant participants increased, the landlord filed Motions of Judgement in the instant 1981 court action alleging tenant violation of the 1983 settlement agreement.

The trial judge, despite tenant objections, lack of jurisdiction, right to a jury trial on the merits of the factual issues of the terms of the agreement in dispute, granted the landlord the right to evict them for

breach of the April 11, 1983 court approved settlement accord.

This Petition for Writ Certiorari arises out of the Court of Appeals affirmance of the trial court's judgment.

On November 25, 1985, the D.C. Rent Administrator, ruled in Tenant Petition T/P 12,117 Leslie and Thelma Rutherford v. Hagner Management Corporation that, the settlement agreement was "unclear as to whether or not the tenants can challenge subsequent rent increases pursuant to Consumer Price Index provision. As such, the Examiner will not give full faith and credit to the courts decision."

Thelma and Leslie Rutherford were parties to the April 11, 1983 settlement agreement, however, then did not withhold rent in July 1984 and filed a new tenant petition challenging the landlord's right to collect the rents and any claimed

increases pursuant to the settlement agreement.

The D.C. Rental Office,again, ordered the landlord to reduce rents and pay refunds, effective December 19, 1985, which it failed to do or pay $730.00 in refunds.

B. Statement of Facts.

The District of Columbia Rent Administrator, pursuant to tenant petition T/P 3788 found that the owners of the Dorchester House Apartment had exceed the local rent ceilings since 1973 by raising the rents to the levels of "fraudulent" comparable rental units. The landlord also converted to a mandatory "air conditioning service" the service which was "optional"

appellate agency granted a stay upon the landlord posting a partial $500,000 surety.

This Petition involves the issues involving the interpretation of a settlement agreement of April 11, 1983 providing for an interim rent until May 1,1984.

During the settlement discussions between the owners and the tenants, in the midst of several simultaneous proceedings in several forums. The landlord proposed that the interim rents be paid until" the later of April 30, 1984 or until a decision is rendered in T/P 3788." Benoit Brookens, the chief tenant coordinator, deleted the word "later" from the text and substituted "earlier". The landlord and the tenants then agreed to delete both "later" and "earlier" and let the

actions defending by relying on the Rent Administrators decision in T/P 3788 and violations of the D.C. housing code.

The landlord had reneged on two other settlement agreements with the tenants, one prior to and one subsequent to the April 11, 1983 agreement.

The landlord never complied with any of the Rent Agency Orders, never filed refunds plans, and only took retaliatory actions against tenants who attempted to recoup rent refunds as ordered. In July 1985, the D.C. Rental Accommodations Office, issues a notice of "Non-Compliance" with the May 22, 1984 Order in T/P 3788 and notified the owners of potential $5,000 daily fines. The landlord has not complied and still had not. Subsequently, the

agreement expire April 30, 1984.

Four judges have reviewed the same provision. Judge Kramer in the D.C. Superior Court and Administrative Law Judge Thomas Word of the D.C. Rental Accommodations Office interpret the agreement in accordance with the tenants interpretation while Judges Thompson and Judge Alprin of the D.C. Superior Court interpret the agreement in accordance with the landlord's view.

The tenants maintained entitlement to a right to a jury trial on the issue of disputed factual basis as to the intention of the parties as to the duration of the agreement.

The D.C. Court of Appeals failed to hear the case on the merits and "Summarily Affirmed" the decision in favor of the landlord, Hagner .

V.
ARGUMENT

A. The Trial Court erred in denying the tenants a jury trial on the factual issues in dispute.

The Seventh Amendment to the United States Constitution preserves the right to a jury trial on those issues triable by a jury in 1791. Bailey v. Grand Trunk Lines New England, 609 F. Supp. 48 .D.C. Vt. 1984. Thus the trial court abused its discretion in failing to permit a jury trial on the merits. Lopez v. Lopez 691 S.W. 2d. 95 Tex. App. 4th Dist 1985.

A jury trial predicated on a legal cause of action is not defeated or impaired by a prior proceeding without a jury on other issues, even in the same case. Philips v. Kaplus, 764 F. 2d. 807. Fla. 1985.

The landlords claim for breach of the settlement agreement is identical to any other contractual claims breach, as breach of lease for failure to pay rent. In the District of Columbia, the federal court has rules such claim provides an entitlement to the right to a jury trial upon the merits. Blake v. American College of Obstetricians and Gynecologists, 608 F. Supp. 1239 (D.C.) 1985. Such right even extends to summary possessory actions for the failure to pay rent. Criss v. Salvation Army Residences. 319 S.E. 2d 403 (W.Va. 1984).

B. The Trial Court failed to make adequate findings on whether the Landlords failure to pay refunds pursuant to the May 22, 1984 Order, constituted a breach of a material pre-condition to enforcement of any alleged breach by the tenants.

Clearly against the weight of the evidence, and the testimony of Nigel Scott pertaining to the terms of the duration of the April 11, 1983 agreement. the court failed to properly consider the effect of the landlord to comply with the terms of the May 22, 1984 order for the Rent Administrator.

The bad faith of the landlord is a factor not considered in determining whether to gran the landllord summary relief with unclean hands seeking equitable relief. Findings of fact are essential when proceeding without a jury. Clark and Stone, Review of Findings of Fact, 4 U. of Chi. L. Rev. 100, 215 (1937). Superior Court rule 52 adopting Federal Rule of Civil Procedure 52.

C. The D.C. Court of Appeals failed to consider the Constitution requirements of due process for possessory action to deprive a individual of their property rights and possession of their home.

The D.C. Court of Appeals erred in failing to review the factual issues on the merits, particularly whether the testimony of Nigel Scott is weighted against the Courts interpretation; whether the compliance by the landlord with the rent agency Order is a material element to the agreement and extinguished on May 1, 1984. The Court failed to provide findings and guidance on the material elements of the agreement which has been breached by the landllord and differing interpretations by judicial officials charged with the interpretation of the agreement.

VI
CONCLUSION

For the reasons set forth above, in view of the fact that Petitioners may be summarily evicted without trial, pursuant to the Settmenment agreement, deprived of their homes, without trial, the Court requests that this Petition for Certiorari be granted and that Petitioners be allowed to present further arguments to this Court on their contention that the case should be remanded for a jury trial on the merits and finding of facts and consideration of the terms of understanding of the parties.

Dated: December 24, 1985

Respectfully Submitted,

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District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

No. 85-168

September 26, 1985

MAUREEN ABBOTT, Et AL.,
Appeallants,

v.

LT97220-81

HAGNER MANAGEMENT CORPORATION,
Appellee.

BEFORE: Nebeker and Ferren, Associate Judges.

O R D E R

On consideration of appellants' petition for rehearing, it is ORDERED that the petition for rehearing is denied.

PER CURIAM

Copies to:

Honorable William S. Thompson

Clerk, Superior Court

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District of Columbia Court of Appeals
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Washington, D.C. 20001

No. 85-168 August 6, 1985

MAUREEN ABBOT, ET AL., Appellants,

v. LT9/220-81

HAGNER MANAGEMENT CORPORATION, Appellee.

BEFORE: Nebeker and Ferren, Associate Judges.

J U D G M E N T

On consideration of the motion of appellee for summary affirmance, the opposition of appellant and the reply of appellee thereto, it is

ORDERED that the motion for summary affirmance is granted; and it is

FURTHER ORDERED and ADJUDGED that the judgment on appeal be, and it hereby is, affirmed.

FOR THE COURT:

ALAN I. HERMAN
CLERK OF THE COURT

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THE CONSTITUTION OF THE UNITED STATES

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.